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OGC REVIEW COMPLETED

OGC 75-2187
11 June 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Payment of Fair Labor Standards Act (FLSA) Overtime Entitlements

1. The purpose of this memorandum is to record the oral advice passed to the Director of Finance on 10 June 1975 in response to a question put to the undersigned by him and [redacted] Deputy Director of Personnel for Plans and Control. That question involved the requirement to pay overtime compensation under the FLSA. A review by the Audit Staff of the people who were found to be, and advised that they were, either exempt or non-exempt from provisions of the Fair Labor Standards Act turned up thirty-two people originally found to be non-exempt who are, in fact, exempt. Conversely, forty-six people who were originally found to be non-exempt have now been found to be exempt. The question is then, because at this time the Agency still has not paid the FLSA overtime entitlements which have been accruing since last year, should either or both categories be paid.

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2. With respect to those people, who according to the most recent determination have been subject to and non-exempt from the FLSA from the date of its application to Federal employees, even though previously advised to the contrary, payment, of course, must be made. They have a legal entitlement to be paid. With respect to those people who were previously advised that they were subject to, and non-exempt from, the FLSA provisions, but who have only recently been determined to have been exempt all along, the situation is not quite so clear. Accordingly, I spoke to a Branch Chief within the Wage and Hour Division, Department of Labor, William Hoffman (Tel: 523-7043), who advised as follows: If the current determination is correct with respect to these forty-six people, namely, they are now and always have been exempt because they are within one of the exempt categories -- administrative, executive and professional -- then they have no legal right to overtime pay under FLSA. If a claim were

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made by one or more of these individuals the Department of Labor, in Mr. Hoffman's words, would not touch the matter. A further point discussed was that if these individuals have no legal entitlement to FLSA overtime, to go ahead and pay would probably be contrary to law because there is no legal authority under the general pay laws applicable to the Government to make such payments.



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Assistant General Counsel

cc: Tom Yale, D/Finance
[redacted], DD/Pers/P&C

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